SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

INVESTIGATION REPORT LA-2005-003

City of Saskatoon

Summary: The complainant raised with the Office of the Information and Privacy Commissioner a concern that when he applied to the City of Saskatoon for a building permit for renovations to his residence, personal information from the permit application form appeared to have been sold to contractors and suppliers. The Commissioner determined that section 4(a) and (b) of *The Local Authority Freedom of Information and Protection of Privacy Act* applied. The complaint was not well-founded.

Statutes Cited: *The Local Authority Freedom of Information and Protection of Privacy Act* [S.S. 1990-91, c.L-27.1 as am], s. 4(a) and (b)

Authorities Cited: City Collection Co. v. Saskatchewan Government Insurance (Sask. Q.B.) [1993] S.J. No. 535

General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance (Sask. C.A.) [1993] S.J. No. 601

I BACKGROUND

[1] On January 9, 2004, the complainant applied for and was granted a building permit for construction of renovations to the basement of his residence in the City of Saskatoon ("the City"). He subsequently received a letter from a lumber supplier. This was addressed "HOME OWNER, [municipal street address of complainant's residence], Saskatoon, Saskatchewan, [postal code of complainant]". He also received a flyer from an electrical contractor. These materials solicited work for the lumber supplier and electrical contractor respectively.

[2] The complainant wrote to our office on January 28, 2004, relating the above circumstance and detailing efforts he had made to obtain information about the data sharing practices of the City of Saskatoon and the authority for those practices. He advised that at the time he furnished the City with the completed building permit application form and paid the $75 fee, there was no notice to him that his address or name was to be sold to third parties. He stated to our office, "*What gives them the right to let others know what is going on in my house?*".

[3] We contacted the City to gather information as to relevant practices and procedures. The City advised that it routinely prepares two types of weekly building permit reports. One is an "internal" report and the other an "external" report. The internal report is distributed only to departments within the City administration. The internal report includes columns indicating the following data:

Cat. [category] No.;
B. P. [building permit] No.;
Date;
Owner /Address;
Contractor/Address;
Construction Location;
Scope of Work; and
Value.

[4] The City also provided a sample weekly building permit report produced for external distribution. It includes columns indicating the following information:

Cat. [category] No.;
B. P. [building permit] No.;
Date;
The name and address of the owner if the owner is not an individual;
The name and address of the contractor if the contractor is not an individual;
Construction Location;
Scope of Work; and
Value.

[5] The City has described the external report as follows:

> *"The external report is available for purchase by anyone, at an annual fee of $400.00. It contains all of the information contained in the internal report, except that where the work is being undertaken by an individual rather than a contractor, the individual's name and address is deleted. The construction location and scope of work is included. The external report is purchased by agencies such as the Saskatoon Homebuilders' Association Inc. and the New*

> *Home Warranty Program of Saskatchewan Inc., as well as by contractors and other interested individuals."*

[6] The City advised our office that the information in the external report was already being disclosed when *The Local Authority Freedom of Information and Protection of Privacy Act* ("the Act") came into force,

> *"therefore continued to be released in accordance with section 4(a) and (b) of the Act. While section 23(2)(d) states that "the details of a licence, permit or other similar discretionary benefit granted to an individual by a local authority" is not considered to be "personal information", we feel that deleting the names of individuals is a good compromise which balances the right of the public for access to records of the municipality, and the right of an individual to not have his or her personal information released."*

[7] We were advised that there is apparently no statutory requirement in Saskatchewan as to what must or must not be included in a "building permit". We understand that different Saskatchewan municipalities use different versions of a building permit.

[8] The City asserted that the authority for the disclosure was section 4(a) and (b) of the Act since this information was already being disclosed prior to the proclamation of the Act.

II RECORDS AT ISSUE

[9] External Weekly Building Permit Report.

III ISSUES

1. **Did the City of Saskatoon properly apply section 4(a) and (b) of the Act when it disclosed the external building permit information of the complainant?**

2. **Did the City of Saskatoon properly apply section 23(2) of the Act?**

IV DISCUSSION OF THE ISSUE

[10] The relevant provisions in the Act are as follows:

Section 4

"4 This Act:

(a) complements and does not replace existing procedures for access to information or records in the possession or under the control of a local authority;

(b) does not in any way limit access to the type of information or records that is normally available to the public;"

Section 23

"23(1) Subject to subsection (1.1) and (2), "personal information" means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) ...information relating to financial transactions in which the individual has been involved;

...

(e) the home or business address...of the individual;

...

(j) information that describes an individual's finances, assets, liabilities,...

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

...

23(2) "Personal information" does not include information that discloses:

...

(d) details of a licence, permit or other similar discretionary benefit granted to an individual by a local authority;

...

23(3) Notwithstanding clauses (2)(d) and (e), "personal information" includes information that:

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1)."

[11] The City is a local authority within the meaning of the Act since it is a "municipality" as described in section 2(f)(i) of the Act.

[12] The legal authority for a municipality to issue building permits is found in *The Uniform Building and Accessibility Standards Act* ("the UBAS Act") and regulations. The UBAS Act came into force in June 1988.

[13] A Saskatchewan government document, the *Building Bylaw Handbook 1996* ("Handbook") is a resource for municipal governments in Saskatchewan. That Handbook states:

> *"The building permit application should be filed by address or legal description.... The address or legal description file allows the local authority to develop a historical record of building activity on the site for reference during assignment of tax assessment values and during review of subsequent building permit applications."* [1]

[14] Sections 13 and 14 of the UBAS Act authorizes a local authority to make bylaws with respect to the following:

> *"Providing for the form and content of permits for the construction, erection, placement, alteration, repair renovation, demolition, relocation, removal, use, occupancy or change of occupancy of a building."* [2]

[15] Saskatoon issues building permits pursuant to its "building bylaw", Saskatoon Bylaw No. 7306.

1. Did the City of Saskatoon properly apply section 4(a) and (b) of the Act when it disclosed the external building permit information of the complainant?

[16] The City asserted that this personal information had been available for purchase prior to the Act coming into force on July 1, 1993. Saskatoon Bylaw No. 7306 came into force July 1, 1992. We first need to deal with the question of just what personal information was routinely available prior to July 1, 1993.

[1] Prepared by Building Standards, Saskatchewan Municipal Government, September 1996. p.17
[2] Ibid, p.4

[17] The City was very helpful by producing an Affidavit as to the practice of the municipality prior to 1993 when the Act came into force. The Affidavit was sworn by the Manager of the Building Standards Branch of the Community Services Department of the City. The Building Standards Branch of the City is responsible for issuing all building and plumbing permits within the City of Saskatoon and for all building and plumbing inspections within the City.

[18] Exhibited to the Affidavit are sample building permits issued prior to 1993 and other sample building permits issued subsequent to 1993. Each building permit contains columns indicating the following:

> The building permit number;
> The date the building permit was issued;
> The name and address of the owner [originally withheld if owner specifically requested but in later versions, withheld if the owner is an individual];
> The name and address of contractor [originally withheld if the contractor specifically requested and in later versions, withheld if the contractor is an individual];
> The address of the construction;
> The scope of the construction; and
> The value of the construction.

[19] The Affidavit provides in part as follows:

> "...
>
> 6. *That, as part of the building permit process, my Branch produces a weekly building record report which summarizes all building permits which have been issued by The City of Saskatoon in the previous week.*
>
> 7. *That a search of the records of my Branch has revealed that the practice of producing such a weekly report has been occurring since at least 1982.*
>
> 8. *That a search of the records of my Branch has revealed that prior to 1982, all permit information was catalogued and available for viewing by the public upon request.*
>
> 9. *That a search of the records of my Branch has revealed that from the year 1982 to the year 1989 a weekly building permit report was produced. It included the following information:*
>
> *(a) the building permit number;*
> *(b) the date the building permit was issued;*
> *(c) the name and address of the owner unless the owner specifically requested that it be withheld;*
> *(d) the name and address of the contractor unless the contractor specifically requested that it be withheld;*

(e) the address of the construction;
(f) the scope of the construction;
(g) the value of the construction; and
(h) the license fee.

Attached as Exhibit "C" is a sample of a weekly building record report produced between 1982 and 1989. The weekly building report was in paper form and distributed both internally and externally.

10. That a search of the records of my Branch has revealed that from the year 1989 to the year 1998 an electronic weekly building permit report was produced. It included the following information:

(a) the building permit number;
(b) the date the building permit was issued;
(c) the name and address of the owner unless the owner specifically requested that it be withheld;
(d) the name and address of the contractor unless the contractor specifically requested that it be withheld;
(e) the address of the construction;
(f) the scope of the construction; and
(g) the value of the construction.

Attached as Exhibit "D" is a sample of a weekly building report between 1989 and 1998.

11. That from the year 1998 to the present a weekly building permit is produced for external distribution. It includes the following information:

(a) the building permit number;
(b) the date the building permit was issued;
(c) the name and address of the owner if the owner is not an individual;
(d) the name and address of the contractor if the contractor is not an individual;
(e) the address of the construction;
(f) the scope of the construction; and
(g) the value of the construction.

Attached as Exhibit "E" is a sample of a weekly building permit report produced between 1998 and the present.

12. That from the year 1998 to present a weekly building permit report was produced for internal distribution. It included the same information as the external report except it contained the names of contractors and applicants in all cases. Attached as Exhibit "F" is a list of recipients of the internal list. Attached as Exhibit "G" is a sample of the weekly building permit report produced between 1998 and the present."

[20] I note that section 4 of the Act was considered by the Saskatchewan Court of Queen's Bench in City Collection Co. v. Saskatchewan Government Insurance [1993] S.J. No. 535 and by the Saskatchewan Court of Appeal in General Motors Acceptance Corp. of Canada v. Saskatchewan Government Insurance [1993] S.J. No. 601. In the latter decision, the Court noted that,

> *"The evidence clearly established that this practice prevailed before proclamation of the Act. Before enactment of The Vehicle Administration Act, SS. 1986, c. V-2.1, the Highway Traffic Board performed a similar function under The Vehicles Act, R.S.S. 1978, c. V-3 (REPEALED). When the records of registration were under the control of the Highway Traffic Board, members of the public enjoyed access to its records for the type of information sought in this case."*

[21] In City Collection decision, the Court observed that:

> *"Prior to the passage of the Act, SGI* [Saskatchewan Government Insurance] *routinely provided the appellants with vehicle registration information, and in particular, the names and addresses of the registered owners of vehicles which were parked in facilities operated by Imperial. This was in keeping with the then existing policy and procedure of SGI to make this information available to members of the public who had a genuine interest in this information."*

[22] The only burden of proof provision in the Act is found in section 51. That provides as follows:

> *"51 In any proceeding pursuant to this Act, the burden of establishing that access to the record applied for may or must be refused or granted is on the head concerned."*

[23] Although I am dealing with a privacy complaint and not a request for review, I find that it would be appropriate for the local authority to bear the burden of proof when it relies upon section 4(a) or (b) of the Act. The assertion of a fact is not equivalent to proof of a fact. I am entirely satisfied by the material provided by the City in this investigation, that personal information disclosed by means of the external weekly building permit report is part of a practice of disclosure that existed prior to the proclamation of the Act.

2. Did the City of Saskatoon properly apply section 23(2) of the Act?

[24] Although I have found that section 4(a) and (b) do apply to the information in question, I note that even if those provisions did not apply, the details of the building permit would not be considered "personal information". As noted above, section 23(2)(d) of the Act does provide that "*the details of a licence, permit or other similar discretionary benefit granted to an individual by a local authority*" do not constitute "personal information". According to section 23(3) the information supplied by an individual to support an application for a discretionary benefit would be "personal information".

[25] The City advises that notwithstanding that provision, it has elected to delete the names of individuals when it publishes the external weekly building permit report. I commend the City for this decision and its sensitivity to the privacy of its citizens.

[26] I want to acknowledge the full co-operation we received from the City of Saskatoon throughout this review.

V RECOMMENDATIONS

[27] I find that the complaint is not well-founded.

[28] I find that the City of Saskatoon has properly invoked section 4(a) and (b).

[29] I recommend that the City consider some notification to persons applying for a building permit of the type of information available to third parties, perhaps through the municipal website.

Dated at Regina, in the Province of Saskatchewan, this 24th day of October, 2005.

R. GARY DICKSON, Q.C.
Information and Privacy Commissioner for Saskatchewan